

S.B. 725: Less Discretion for Magistrates, More Profit for Bail Bondsmen

By Sara Whitaker, February 2024

Overview

On February 26, 2024, the Senate passed Senate Bill 725, which would restrict magistrates' authority to set criminal case bonds, while expanding the reach of bail bondsmen.

What is a Bond?

A bond — also referred to as bail — is meant to ensure that an accused person will appear for all their court hearings. Unless charged with an offense that carries a life sentence, every person is entitled to bail. At a first appearance hearing, the magistrate will set a bond amount and decide the form of the bail. A person may be required to pay the full amount in cash or post a recognizance bond, which could be a signed promise to return to court, 10 percent of the bond amount, posting property in the amount of the bond, or using a bail bondsman to post the bond. But, as the United States Supreme Court reminded courts setting bond, “liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.”

Bond Amount	Type of Bond	What the Court Must Receive for Release
\$5,000	Cash Bond	\$5,000 cash
	Personal Recognizance	No payment required
	10 Percent Recognizance	\$500 cash
	Property Recognizance	A pledge to forfeit a West Virginia property with a value of at least half of the bond amount
	Surety Recognizance	A bail bondsman signs a pledge for the bond amount

Sources: W. Va. Code §§ 62-1C-1; 62-1C-2, 62-1C-4; United States v. Salerno, 481 U.S. 739, 755 (1987).

Less Discretion for Magistrates

Each year, more than **120,000 criminal cases are filed in magistrate courts**.¹ When a person is arrested, they are brought before a magistrate who makes what can be the most important decision about a person's criminal case: whether they can remain free in their community or go to jail while they await their next hearing. West Virginia Code and the U.S. Constitution require a magistrate to set the least restrictive bond necessary to ensure that a person will appear for court hearings and not pose a threat to public safety.

But under Senate Bill 725, magistrates would lose the power to set a personal recognizance bond on any of the **13,000+ felony cases** filed in magistrate courts.²

S.B. 725's requirement to set a money bond in felony cases would upend current practice. In February, a survey of practicing attorneys in 29 counties revealed that in 25 of those counties, magistrates set PR bonds in appropriate felony cases.³ (Those 25 counties alone represent 63.3 percent of the felonies filed across the state.) In some counties, personal recognizance bonds are common practice: An analysis of felony charges filed in Kanawha County revealed that magistrates set **personal recognizance bonds in one out of every four felony cases**.⁴

Money bond does little to advance the State's interests. Researchers have found no evidence that posting a money bond influences failure to appear or pretrial crime.⁵

But money bond does increase the likelihood that the person will await trial from a jail cell.⁶ Which is bound to happen in West Virginia where **nine out of 10 people charged with a felony in West Virginia are deemed too poor to afford an attorney** and qualify for free representation.⁷ Under state guidelines, an accused person with a family of three must earn less than \$27,150 per year to qualify for court-appointed counsel.⁸

More Customers for the Bail Bond Industry

S.B. 725 also removes magistrates' discretion regarding *how* money bonds are to be posted. In a typical case, the magistrate will choose the amount of bond and the form the bond will take (cash, property, etc.). But under S.B. 725, the magistrate would choose the amount of bond and the accused person would choose how to post that bond. Thus, if an accused person is unable to post the full amount of the bond, they may contract with a bail bondsmen.

As of February 29, 2024, there were **142 licensed bail bondsmen** in the state.⁹ These businesses do not make money when people can afford their bonds. By increasing the number of people required to post a money bond, S.B. 725 increases the likelihood that more accused people will contract with bail bondsmen to secure their pretrial freedom.

West Virginians Pay the Price

A person jailed pretrial is at greater risk of job loss and reduced future earnings, becoming homeless, and losing custody of their children.¹⁰ They are more likely to be convicted, more likely to receive a longer jail or prison sentence, and more likely to accrue court fines and fees than if they had not been detained.¹¹

Regional jail overcrowding is a problem that will not go away. In February 2024, the **ten regional jails were at 106.6 percent capacity**.¹² One regional jail had 207 more people than it had space to house.

In FY 2023, West Virginia counties received a jail bill of \$44.7 million.

Source: "Fiscal Year 23 Jail Billing" (Department of Homeland Security, July 2023).

More people in jail is good business for the bail bond industry but comes at a high price for West Virginians.

¹ "The 2022 Annual Statistics Report on Circuit, Family, and Magistrate Courts" (Charleston, WV: Supreme Court of Appeals of West Virginia Administrative Office), 16.

² "The 2022 Annual Statistics Report on Courts," 16.

³ WVCPB survey of practicing attorneys, conducted from February 22-29, 2024. County and source information with author.

⁴ WVCPB analysis of data accessed through "UJA/LEO", an online case portal administered by the Supreme Court of Appeals of West Virginia, for all felony charges filed in April 2022 in Kanawha County.

⁵ Timothy R. Schnacke, "[Fundamentals of Bail: A Resource Guide for Pretrial Practitioners and a Framework for American Pretrial Reform](#)" (National Institute of Corrections, August 2014): 12.

⁶ Ram Subramanian et al., "[Incarceration's Front Door: The Misuse of Jail in America](#)" (New York, NY: Vera Institute of Justice, 2015), 30, 32; Aurélie Ouss and Megan Stevenson, "[Does Cash Bail Deter Misconduct?](#)" (January 1, 2022), 3.

⁷ Data regarding percentage of people charged in West Virginia who qualify for court-appointed counsel, provided in an email from Dana Eddy, Executive Director of Public Defender Services, July 18, 2022.

⁸ "[Financial Guidelines for Determining Eligibility for Legal Representation by Appointed Counsel or Public Defender \(effective April 1, 2021\)](#)" (Charleston, WV: Department of Administration, Public Defender Services).

⁹ "[Licensed Bail Bondsmen as of 02/29/2024](#)" (Charleston, WV: West Virginia Offices of the Insurance Commissioner).

¹⁰ Pamela Metzger et al., "[Ending Injustice: Solving the Initial Appearance Crisis](#)" (Dallas, TX: Deason Criminal Justice Reform Center, September 2021), 18; Will Dobbie, Jacob Goldin, and Crystal S. Yang, "[The Effects of Pretrial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges](#)," American Economic Review 108, no. 2 (February 2018): 227; Lucius Couloute, "Nowhere to Go: Homelessness Among Formerly Incarcerated People" (Northampton, MA: Prison Policy Initiative, August 2018); Eli Hager and Anna Flagg, "[How Incarcerated Parents are Losing Their Children Forever](#)," The Marshall Project, December 2, 2018.

¹¹ "[Access to Counsel at First Appearance,": A Key Component of Pretrial Justice](#)" (Washington, DC: National Legal Aid & Defender Association, September 2020), 5; Mary T. Phillips, "[Bail, Detention, & Felony Case Outcomes](#)" (New York, NY: New York City Criminal Justice Agency, Inc., September 2008), 7.

¹² "West Virginia Division of Corrections and Rehabilitation Adult Inmate Count, Run Date 2/1/2024" (Charleston, WV: Division of Corrections and Rehabilitation).